

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 28, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Atty. Robyn Schuchardt, Waukesha County Assistant
Corporation Counsel
Allan J. Miller, BA04:027, petitioner
Atty. Maureen McGinnity, BA04:027, representing the
petitioner
Kathy Carter, BA04:027, Court Reporter
Kenneth J Marien, BA04:027, neighbor
Bob Nash, BA04:027, interested party
Rick Reith, BA04:027, interested party
Ronald Milazzo, BA04:028, petitioner
Aaron Schlimes, RLA, David J. Frank Design Group,
BA04:028, Landscape Architect
Christopher and Dani Dix, BA04:024, petitioners
Nancy Frinzi, BA04:009, petitioner
Joe Pecor, BA04:026, petitioner (hearing on May 12, 2004)
Jon Wilson

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I move to approve the Summary of the Meeting of April 14, 2004.*

The motion was seconded by Ms. Voelker and carried unanimously.

NEW BUSINESS:

BA04:027 ALLAN J. MILLER

Mr. Tarmann

I move that we approve Mr. Miller's request for variances and for special exceptions from the shore setback, floodplain setback and offset requirements of the Ordinance, subject to the following conditions:

- 1. The new deck may extend no farther than six (6) feet from the east side of the residence and it must be an open, unroofed deck.*
- 2. Prior to the issuance of a Zoning Permit to replace the enclosed entryway with a deck, plans for the new deck must be submitted to the Planning and Zoning Division staff for review and approval.*
- 3. Prior to the issuance of a Zoning Permit to replace the enclosed entryway with a deck, the non-conforming metal shed near the lake must be removed from the property.*
- 4. Certification from a structural engineer that the foundation and the existing masonry walls are suitable to accommodate the proposed remodeling and that the floor joists on the second floor are structurally suitable to accommodate the proposed expansion of the second floor must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.*
- 5. A detailed grading plan, showing the changes that would be made to accommodate the new door on the south side of the residence, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review. If the implementation of that grading plan is found to require either a Minor Grading Permit or a Conditional Use Permit, that Minor Grading Permit or a Conditional Use Permit must be issued prior to the issuance of a Zoning Permit.*
- 6. Detailed construction plans for the proposed remodeling and expansion must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit.*

The approval of this request, as conditioned, will serve to promote the purpose and intent of the Ordinance and does not severely compromise the Ordinance in any fashion and enables the petitioner to have a reasonable use of his property.

The motion was seconded by Mr. Ward and approved with four yes votes. Mr. Schultz abstained.

The staff's recommendation was for denial of special exceptions from the shore setback, floodplain setback, and offset requirements and denial of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirements to permit the petitioner to remodel and expand his residence as proposed, including the construction of a second story addition. However, the staff recommended approval of special exceptions from the shore setback and floodplain setback requirements to permit the petitioner to replace a 3.5 x 5 ft. enclosed entryway on the east side of his residence with an open deck, subject to the following conditions:

1. The new deck may extend no farther than six (6) feet from the east side of the residence and it must be an open, unroofed deck.
2. Prior to the issuance of a Zoning Permit to replace the enclosed entryway with a deck, plans for the new deck must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit to replace the enclosed entryway with a deck, the non-conforming metal shed near the lake must be removed from the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The recent decision by the State of Wisconsin Supreme Court that changed the definition of unnecessary hardship from a situation where, in the absence of a variance, no reasonable use can be made of the property, to a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome does not change the fact that it is not in conformance with the purpose and intent of the Ordinance to perpetuate the existence of extremely non-conforming structures, such as the Miller residence, by permitting them to be extensively remodeled. Further, a significant portion of this request was for special exceptions, rather than variances, which do not require the demonstration of an unnecessary hardship. As recommended above, the petitioner will be permitted to improve the accessibility of his residence by replacing the existing enclosed entryway with an open deck, which requires only special exceptions from the shore and floodplain setback requirements and which is not contrary to the public interest or the purpose and intent of the Ordinance. Denial of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirement does not prevent the use of the property for a permitted purpose, i.e. for a single-family residence.

Denial of the request, as proposed, will not prevent relocation of the door on the west side of residence to the south side of the residence, provided the petitioner applies for and receives any necessary permits for the grading that will be required to accommodate a door on the south side of his residence. *Note: This will require the submittal of a detailed grading and drainage plan, showing existing and proposed grades, prepared by a registered landscape architect, surveyor, or engineer and, depending on the scope of the plan, either a Minor Grading Permit or a Conditional Use Permit.* Further, denial of the request, as proposed, will not prevent remodeling the interior of the existing residence to make it more handicapped accessible, as long as the remodeling does not expand the footprint of the structure or add any living area on the second floor and as long as the cost does not exceed 50% of the fair market value of the structure. Finally, the petitioner has the option of utilizing the variances granted in 2002 (BA02:014) to

construct a new single-family residence on the property. Therefore, denial of the request, as proposed, leaves the petitioner with other alternatives to make his home handicapped accessible and is not unnecessarily burdensome.

BA04:028 RONALD AND CHERYL MILAZZO

Mr. Schultz

I make a motion to approve the petitioner's request, as submitted, including the fire pit and surrounding crushed granite area. The reason for this approval is that the crushed granite area is not a patio. It is a permeable surface and is only landscaping material, no different than planting beds or bark mulch, and should not be considered a patio.

The motion was seconded by Ms. Voelker and carried with four yes votes. Mr. Bartholomew voted no.

The staff's recommendation was for denial of variances from the shore setback, floodplain setback, and offset requirements, as requested for the installation of a brick paver patio on the lake side of the residence and the installation of a crushed granite patio and fire pit on the lake side of the proposed brick paver patio, but approval of a special exception from the shore setback requirement to permit the installation of a brick paver patio on the lake side of the residence, subject to the following conditions:

1. The brick paver patio on the lake side of the residence must have a shore setback of no less than 80% of the actual horizontal distance between the residence and the lake, so that it will require a special exception, rather than a variance, from the shore setback requirement.
2. The brick paver patio on the lake side of the residence must have a floodplain setback of no less than 80% of the horizontal distance between the residence and the 100-year floodplain, so that it will not require either a variance or a special exception from the floodplain setback requirement.
3. The brick paver patio on the lake side of the residence must be adjacent to the residence and at least 5 ft. from the side lot lines.
4. The proposed crushed granite patio and fire pit will not be permitted.
5. Prior to the issuance of a zoning permit for the brick paver patio on the lake side of the residence, a Plat of Survey indicating the exact shore and floodplain setbacks of the existing residence, as measured to the outer edge of the cantilevered wall on the lakeside of the residence, and indicating the shore and floodplain setbacks of the proposed brick paver patio, in conformance with above-conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. Note: The shore and floodplain setbacks should be measured to the closest points, perpendicular to the shore and the 100-year flood elevation line.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

In order to qualify for a variance, it must be demonstrated that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a

situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would not prevent the petitioners from using the property for a permitted purpose, i.e. for a single-family residence, and conformity with the shore setback, floodplain setback, and offset requirements would not be unnecessarily burdensome. However, granting a special exception from the shore setback requirement, as recommended, does not require the demonstration of an unnecessary hardship and will permit the petitioners to construct a small patio, extending approximately 8 ft. from their residence, in a location that will not adversely affect the adjacent properties or the lake and is not contrary to the public interest. Therefore, the approval of a special exception from the shore setback requirement to permit the installation of a brick paver patio on the lake side of the residence, as recommended, would be in conformance with the purpose and intent of the Ordinance.

BA04: 023 DANIEL WILLEMS

Ms. Voelker *I make a motion to hold this hearing in abeyance, as requested by the petitioner. At the request of the Town of Merton Board of Adjustment, it will be held in abeyance until the meeting of June 9, 2004.*

The motion was seconded by Mr. Schultz and carried unanimously.

BA04:024 CHRISTOPHER AND DANI DIX

Mr. Schultz *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial of a floor area ratio variance, but approval of a floodplain setback special exception, subject to the following conditions:

1. The non-conforming shed must be removed from the property or relocated outside of the 100-year floodplain and at least 75 ft. from the lake, at least 20 ft. from the edge of the private road right-of-way and at least 10 ft. from the residence and attached garage, prior to the issuance of a zoning permit for the sun room addition.
2. If the petitioners chose to relocate the shed rather than remove it from the property, they must submit a revised Plat of Survey, prepared by a registered Land Surveyor, showing a proposed location for the shed, in conformance with the above-condition, prior to the issuance of a zoning permit for the sun room addition. If the revised Plat of Survey shows that the shed is already located in conformance with Condition #1, the shed may remain in its present location.
3. The proposed sun room addition must be reduced in size to conform with the maximum permitted floor area ratio of 15%. *Note: This would allow a sun room addition of up to 210 sq. ft. if the non-conforming shed is retained on the property or up to 267 sq. ft. if the non-conforming shed is removed from the property.*

4. Prior to the issuance of a zoning permit for the sun room addition, revised plans for the sun room addition, in conformance with the above-condition, must be submitted to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested floor area ratio variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property already contains a 2,533 sq. ft., two-story residence with a two-car attached garage, and a boathouse. In addition, as noted above, if the non-conforming shed is retained on the property, a sun room addition of up to 210 sq. ft. could be constructed in conformance with the floor area ratio requirement or, if the non-conforming shed is removed from the property, a sunroom addition of up to 267 sq. ft. could be constructed in conformance with the floor area ratio requirement. Therefore, conformance with the maximum permitted floor area ratio would not prevent the owners from using the property for a permitted purpose and would not be unnecessarily burdensome.

The proposed sun room addition would be located no closer to the floodplain than the existing residence. In fact, the proposed addition would be approximately 10 ft. farther from the floodplain than the closest point of the existing residence. This requires a special exception, rather than a variance, from the floodplain setback requirement, which does not require the demonstration of an unnecessary hardship. The proposed sun room addition is not contrary to the public interest and will not adversely affect the lake or the adjacent property owners. Therefore, the approval of a special exception from the floodplain setback requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:009 NANCY FRINZI

Ms. Voelker

I make a motion to amend Condition No. 2 of the offset variance that was granted on March 10, 2004, as recommend by the staff in the memo dated April 28, 2004.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the petitioner's request to amend Condition No. 2 of the offset variance that was granted on March 10, 2004, which permitted her to replace an existing detached garage with a larger detached garage, conditioned upon the new garage being located a minimum of 10 ft. from the west lot line, to allow the new garage to be located a minimum of 5.7 ft. from the west lot line.

The reasons for that recommendation are as follows:

Meeting the required separation distance from the overhead power lines, an offset of 10 ft. from the west lot line, and the required 10 ft. offset from the residence would not permit the construction of a detached garage more than 30 ft. wide, as was believed at the time the variance was granted. While this change may still not permit Ms. Frinzi to construct a 36 ft. wide garage, as proposed, it would allow her to construct a new detached garage, approximately 34 ft. wide, with the same offset from the west lot line as the existing garage. It is felt that because the Frinzi residence does not have a basement, a slightly greater offset variance than was originally approved is justified in order to permit a garage more than 30 ft. wide.

ZONING BOARD OF ADJUSTMENT/APPEALS WORKSHOP

Mr. Tarmann

I move that we approve the attendance of any Board of Adjustment members or alternates at the Zoning Board of Adjustment/Appeals Workshop presented by the University of Wisconsin Extension Land Use Education center to be held at the Jefferson County University of Wisconsin-Extension Offices on May 18, 2004.

The motion was seconded by Mr. Schultz and carried unanimously.

RECENT SUPREME COURT DECISIONS RELATING TO BOARD OF ADJUSTMENT

Atty. Robyn Schuchardt, Assistant Waukesha County Corporation Counsel, discussed recent Supreme Court decisions relating to Board of Adjustment cases (Town of Delafield versus Winkelman and State of Wisconsin ex rel. Ziervogel and McGinnity versus Washington County Board of Adjustment). See attached Exhibits "A" and "B".

ADJOURNMENT:

Mr. Bartholomew

I make a motion to adjourn this meeting at 9:30 p.m.

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment